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Docket No.: KCC-16,986

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Paul J. DATTA, et al.

Serial No.: 10/010,965

Filing Date: 07 December 2001

Title: PRODUCT SEAL OF DISSIMILAR
MATERIALS

Customer No. 35844

Confirmation No. 5676

Group No.: 3761

Examiner: K. Reichle

APPELLANTS' REPLY BRIEF UNDER 37 CFR 41.41

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants herewith file their Reply Brief in the above-identified case, in response to the Examiner's Answer mailed 14 May 2007. Appellants respectfully submit that the Examiner's assertions are incorrect as a matter of law and fact. Thus, for the reasons set forth below, Appellants respectfully request that this Board reverse the rejection of Claims 1-12 and 40-43 under 35 U.S.C. §102(b) and/or 35 U.S.C. §103(a).

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In the Examiner's Answer, the Examiner states that the Appellants' statement of the status of the amendments after final rejection contained in the brief is incorrect. In the Second Amended Appeal Brief filed 22 March 2007, Appellants indicated that no amendments to the claims were filed subsequent to the most recent final rejection. Contrary to the Examiner's assertion, the Response filed by Appellants on 19 May 2004 included no amendments. Appellants thank the Examiner for her amendments to the summary of claimed subject matter in the brief.

Also in the Examiner's Answer, the Examiner reiterates the rejections of Claims 1-12 and 40-43 under 35 U.S.C. §102(b) and/or 35 U.S.C. §103(a) presented in the Office Action mailed 09 March 2005, and then presents a response to Appellants' arguments presented in the Appeal Brief. Appellants maintain that the Johnson reference, alone or in combination with the McNichols and Morman references, fails to disclose or suggest Appellants' claimed invention.

1. THE JOHNSON REFERENCE FAILS TO DISCLOSE OR SUGGEST A SECOND EAR PANEL FORMED OF A SECOND MATERIAL DIFFERENT FROM THE FIRST EAR PANEL MATERIAL

Appellants' claimed invention is directed to a pant-like, refastenable disposable absorbent article having side seams that include a front ear passively bonded to a back ear, wherein the front ear is releasable from the back ear desirably without tearing or damaging the back ear. By forming the ears from dissimilar materials, the article is designed such that, if either ear must tear when the passive bond is torn, only the front ear will sustain damage, thereby preventing damage to the back ear.

Appellants maintain that the Johnson reference fails to disclose or suggest a second ear panel formed of a second material different from the first ear panel, as recited in Appellants' independent Claims 1 and 40-43. The Johnson reference is directed to a *method* for making a flangeless seam for use in disposable articles. By carrying out the method in accordance with the teachings of Johnson et al., particularly as described at Col. 5, lines 22-63, the resulting disposable article necessarily includes first and second ear panels formed of the same materials.

As pointed out by the Examiner, Johnson et al. disclose a barrier member 205 that

prevents the first member 200 (i.e., first ear panel) and the second member 202 (i.e., second ear panel) from becoming fully joined when the seam between the first and second members is formed. Although Johnson et al. mention that the barrier member may be a separate element either joined or not joined to the first member, or an element or material that is unitary or integrated with at least a portion of the first member, such as a material coextruded with the first member, or portion of the first member that has been chemically, mechanically or otherwise manipulated to act as a barrier to the joining means used to form the seam, the methods described in Johnson et al. fail to disclose or suggest that the first ear panel **extending from a first edge portion of the front waist region** is formed of a material that is different than the material forming the second ear panel **extending from a first edge portion of the back waist region**.

The methods in Johnson et al. provide a barrier member that is present *proximal to the seam*. None of the methods described in Johnson et al. disclose or suggest a manner in which the barrier member, in combination with one of the first and second members, *extends from a first edge portion of the front or back waist region*. In fact, none of the methods described in Johnson et al. disclose or suggest a manner in which the first and second members are formed of *two different materials extending from the edge portions of the front and back waist regions*.

Furthermore, the methods in Johnson et al. form a flangeless seam between the first and second members 200, 202 that is discrete, strong, and economical to manufacture. In contrast, Appellants' claimed article includes a passively bonded, flanged seam between the first and second ear panels.

In *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005), the court cites a number of cases ruling that claims must be read in view of the specification. As explained throughout Appellants' specification and illustrated in the figures, the passive bonds form a "butt seam" or flanged seam between the first and second ear panels. The flanged seam is subsequently folded over and a fastener extending past the flanged seam is refastenably fastened to the front or back waist region, such that the *refastenable seam* forms a "lap seam" or flangeless seam. Thus, the flangeless seams between the first and second members in the Johnson reference are analogous to Appellants' refastenable seams between the fastener and the

front or back waist region, as opposed to Appellants' passively bonded seams between the first and second ear panels.

"Ultimately, the interpretation to be given a term can only be determined and confirmed with a full understanding of what the inventors actually invented and intended to envelop with the claim." *Phillips*, 415 F.3d at 1317, citing *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Phillips*, 415 F.3d at 1313.

While the Office should not import limitations from the specification into the claims, a thorough reading of Appellants' specification and the Johnson reference proves that the flangeless seam in Johnson et al. is not analogous to Appellants' passively bonded seam, and that there is no suggestion or motivation to modify the flangeless seam in the Johnson reference to achieve Appellants' claimed passively bonded absorbent article.

2. THE JOHNSON REFERENCE FAILS TO DISCLOSE OR SUGGEST THE SECOND MATERIAL HAVING A BASIS WEIGHT GREATER THAN A BASIS WEIGHT OF THE FIRST MATERIAL

As explained above, Appellants' claimed invention is directed to a pant-like, refastenable disposable absorbent article having side seams that include a front ear passively bonded to a back ear, wherein the front ear is releasable from the back ear desirably without tearing or damaging the back ear. By forming the ears from dissimilar materials, particularly materials having different basis weights, the article is designed such that only the front ear will tear when the passive bond is torn, thereby preventing damage to the back ear.

Appellants maintain that the Johnson reference fails to disclose or suggest a second ear panel formed of a second material different from the first ear panel, wherein the second material has a basis weight greater than a basis weight of the first material, as recited in Appellants' independent Claim 1.

Contrary to the Examiner's assertion that since one of the ear panels includes element 205 and one does not, "the basis weight of the one ear panel including element 205 is or

obviously is greater than the other ear panel which does not include 205,” Appellants refer to the language in Claim 1, which requires “a first ear panel formed of a **first material extending from a first edge portion of the front waist region**” and “a second ear panel formed of a **second material different from the first material extending from a first edge portion of the back waist region**, the second material having a basis weight greater than a basis weight of the first material.”

As explained above, the methods in Johnson et al. provide a barrier member that is present *proximal to the seam*. None of the methods described in Johnson et al. disclose or suggest a manner in which the barrier member, in combination with one of the first and second members, *extends from a first edge portion of the front or back waist region*. Thus, by carrying out the method in accordance with the teachings of Johnson et al., the resulting absorbent article necessarily includes first and second ear panels *extending from edge portions of the front and back waist regions* that are formed of the **same materials**, and thus have the **same basis weight**.

As further explained above, there is no suggestion or motivation to modify the flangeless seam in the Johnson reference to achieve Appellants’ claimed passively bonded absorbent article.

3. THE JOHNSON REFERENCE FAILS TO DISCLOSE OR SUGGEST AT LEAST ONE MANUALLY TEARABLE PASSIVE BOND THAT CAUSES MORE DAMAGE TO THE FIRST EAR PANEL THAN TO THE SECOND EAR PANEL WHEN DISCONNECTED

Appellants maintain that the Johnson reference fails to disclose or suggest at least one manually tearable passive bond connecting the first ear panel and the second ear panel together, whereupon disconnecting the first ear panel from the second ear panel causes more damage to the first ear panel than to the second ear panel, as recited in Appellants’ independent Claim 40.

As explained above, the methods in Johnson et al. require forming first and second members 200, 202 from the **same web**. Thus, by carrying out the methods in accordance with the teachings of Johnson et al., the resulting absorbent article necessarily includes first and second ear panels *extending from edge portions of the front and back waist regions* that are

formed of the same materials, and thus have the same basis weight.


The only embodiments in Johnson et al. having a “tearable” or passively bonded seam are those in which the barrier member 205 is either torn or separated from at least part of one of the members 200, 202, as described at Col. 9, lines 6-39, and illustrated in Figures 5-7. As noted by the Examiner, “The elements 200, 202 have a tensile strength such that 205 will tear before 200, 202 do.” If the barrier member 205 does in fact tear before either of the first or second members 200, 202, then neither the first nor second member will be damaged. Appellants’ Claim 40 requires damage to occur to at least one of the ear panels. Thus, there is no suggestion or motivation to modify the teachings of Johnson et al. to achieve Appellants’ claimed invention as recited in Claim 40.

CONCLUSION

Appellants maintain that each of the claims is novel and non-obvious over the Johnson reference. Appellants further maintain that neither the McNichols reference nor the Morman reference overcome the deficiencies of the Johnson reference.

For at least the reasons presented in the Appeal Brief and the additional reasons presented above, Appellants respectfully submit that the Examiner’s Answer does not overcome Appellants’ Appeal Brief. Therefore, Appellants respectfully request that the Board reverse the rejections proposed by the Patent Office.

Respectfully submitted,


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